

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. In order to provide respite foster care for G., Mrs. W. had applied for and been approved as a "legally exempt child care provider" (LECC) by SRS in October of 2001. She was restricted to providing day care for only the child G. and was required to attend basic protective services training

within six months. She was also provided with a pamphlet of childcare requirements by SRS at the time of her approval. Among those requirements was "discipline rule B6" that says "children shall not be subjected to corporal punishment, hitting, spanking, [or] pinching". The petitioners do not recall receiving or reading the pamphlet at that time.

3. In February of 2002, SRS received a report from the school at which Mrs. W. worked with respect to an "incident" which may have occurred involving corporal punishment of a student. The details of that incident were not put forth nor relied upon at hearing. However, the incident did prompt SRS to look into Mrs. W.'s fitness to continue to provide LECC care to G.

4. Shortly before the day care certificate came up for renewal, SRS sent a day care licensing specialist to Mr. and Mrs. W.'s home on April 26, 2002 to discuss the requirement at B6 against the use of corporal punishment. The licensing specialist discussed discipline alternatives available for dealing with difficult children for about twenty minutes during an hour and a half long visit. She also provided the petitioners with another copy of the LECC child care pamphlet which spells out Rule B6. Mrs. W. was encouraged to attend training sessions which she had not yet done. She indicated

that she would do this in the near future. The day care licensing specialist felt that the petitioners had been confused at the outset of the meeting but that the conversation was a good one and that they understood the rules by the time she left.

5. In May of 2002, Mrs. W. applied for a LECC certificate to provide respite care for R. as well as G. The certificate was granted provided Mrs. W. not care for any other children, attend training in the month of May 2002, and have no "further incidents of corporal punishment or other regulatory violations." She was again provided with a copy of the LECC childcare pamphlet containing the rule against corporal punishment.

6. The petitioner and her husband did attend the day of training required by the certificate in May of 2002.

7. During the course of their respite care for R. and G., Mr. and Mrs. W. learned that the boys were available for adoption and that their then foster parents, who were an older couple, were not planning to pursue adoption. Mr. and Mrs. W. contacted SRS to express an interest in adopting the boys and SRS informed them that while that process was ongoing the couple would need to be licensed as foster parents for the boys.

8. On June 26, 2002, the petitioners applied for an adoption/foster care license and began "PRIDE" training to become foster/adoptive parents. The training was to take place weekly and run for ten consecutive weeks. On July 23, 2002, the formal application for adoption/foster care license was completed by the petitioners along with a licensing specialist from SRS. It was expected that the children would transition to their home on August 15, 2002.

9. August 5, 2002, the petitioners attended a "PRIDE" session on disciplining children in foster care. The training emphasized the emotional injuries of children who are neglected and abused and the need to model appropriate behaviors and modes of discipline. The course and accompanying materials made it clear that spanking or hitting is an inappropriate method of dealing with these children.

10. On August 14, 2002, SRS received a report that R. had been hit with a cutting board by Mrs. W. A child abuse investigator visited the petitioners' home on August 15, 2002. Mrs. W. was alone at first and told the investigator that she had threatened R. with a cutting board on or about June 14, 2002 but had not struck him. She said she hit a bookcase and that the cutting board broke. She accused R's current foster parents of reporting this in order to sabotage the adoption

process. When Mr. W. came home he admitted that Mrs. W. had hit R. on the back of the left leg near his bottom with a cutting board but it had not been a hard hit. The cutting board had broken but it had been cracked from repeated washings. The investigator could not find any injury to R. and did not substantiate the abuse. However, because the children were in foster care, the investigator notified the foster care division of the investigation. He was particularly concerned that Mrs. W. might have anger management issues.

11. The licensing social worker who was handling the petitioner's foster care license request reviewed the abuse incident report. He also talked with the petitioners on August 23, 2002 to hear what happened and to discuss the reasons that corporal punishment is not appropriate for children in foster care. He described the petitioners as contrite and as having said they were using different forms of discipline now. However, he was also told by the petitioners that they felt spanking, if applied judiciously, could be beneficial. They did not, in the social worker's opinion, understand that this form of discipline is risky and can accelerate into a bigger problem.

12. SRS notified the petitioners on September 5, 2002, that their application to be a foster care home was being denied because of their inability to discipline children in a constructive and educational manner and because they had used corporal punishment with regard to a foster child. More specifically, the letter stated that even though SRS had given the petitioners written LECC pamphlets when they were respite providers detailing SRS' policy with regard to disciplining foster children; had warned them in April of 2002 that corporal punishment was an inappropriate discipline method for foster care children and discussed appropriate alternative methods with them; had required them to sign a specific agreement not to use corporal punishment on the foster care children on April 26, 2002; and had conditioned their respite care license on not using corporal punishment on the children; the petitioners, nevertheless, admitted that Mrs. W. had hit a foster child on the back of the leg with a cutting board on June 14, 2002. SRS concluded that it could not "be assured [that the petitioners] can effectively discipline without resorting to the use of corporal punishment."

13. The petitioners asked for a reconsideration of this decision because they had since undergone training in dealing with abused children and realized that there were better and

more effective discipline methods to use with children and that they have since implemented those methods. They explained that the day the child was hit had been hectic because of an early school closing, the presence of five young boys in their home (including a nephew) and the fact that R. had not taken his medication. They argued that R. wanted to live with them and it was in his best interests to allow the adoption to go forward.

14. The matter went forward for review before the Commissioner's representative on September 26, 2002. The Commissioner acknowledged the petitioner's subsequent training and genuine concern for R. However, after reviewing the evidence, he felt that striking a child with a cutting board was sufficiently alarming to deny the license. SRS could not be certain that the force was not sufficient to have injured the child since he was not examined until two months after the incident occurred. The agency was not willing to take a risk under these circumstances.

15. The petitioners explained at the fair hearing that the incident occurred because there were many children in the house that day, that R. had been acting-out because he had not taken his medication and refused their request to go to his room to cool off. Mr. W. tried to pull him from a chair in

which he had planted himself and Mrs. W. went to get the cutting board. The cutting board is an object that the petitioners display to "intimidate" the children into obeying them. They had no intention of harming R. with the cutting board only of persuading him to obey. The petitioners said that Mrs. W. hit R. on the back of his leg, but not hard. Thereafter, they called the foster mother to come and pick him up. She did so, and after saying that he deserved the swat with the board, "cuffed" him as they left. The petitioners did not report the "cuffing" to SRS. The petitioners say that they have changed their discipline style following their PRIDE training and no longer use corporal punishment as a method of getting children to obey. They are particularly concerned that the oldest boy, R., be returned to their care.

ORDER

The decision of SRS denying the foster care license is affirmed.

REASONS

The Commissioner of the Department of Social and Rehabilitation Services is charged by the legislature with the administration of the foster care program. See, generally, 33

V.S.A. § 304(b)(2) and 3501. The statute specifically gives the Commissioner the duty and authority to:

. . . issue regulations governing application for, and issuance, revocation, term and renewal of licenses and registration. In the regulations he may prescribe standards and conditions to be met, records to be kept and reports to be filed."

33 V.S.A. § 306(b)(1)

Pursuant to this authority the Department has adopted the following pertinent regulations:

Characteristics of Foster Parents

200 Household members in a foster home must be responsible, emotionally stable, emotionally mature people of good character exemplified by past performance and general reputation.

201 Applicants and licensees shall exhibit:

. . .

201.3 Ability to apply discipline in a constructive and educational manner

Discipline

323 Discipline shall be constructive and educational in nature, correction must be fair, reasonable and consistent, and, whenever possible, must be logically connected to the behavior in need of change.

324 A foster parent shall not subject a foster child to any cruel, degrading or unnecessary discipline techniques, including, but not limited to:

324.1 Spanking, slapping, hitting, shaking or otherwise engaging in aggressive physical contact with a child.

. . .

Licensing Regulations for Family Foster Care, 9/1/92

The burden is on the applicants for a foster care license to demonstrate that they meet the above requirements. Fair Hearing Rule No. 11. The facts established that Mrs. W. was a day care provider for a foster child. SRS suspected that Mrs. W. might not understand the requirement that she not use corporal punishment to discipline foster care children. To that end she was specifically and personally warned not to engage in such behavior and her day care license was conditioned upon her complying with that prohibition. She admits that she subsequently hit a foster child with a cutting board but did so to intimidate him not to hurt him. She and her husband explained that this method of discipline was chosen because of the difficulty of dealing with an unmedicated child on a particularly chaotic day. They claim that since that time they have been specifically trained in how to discipline children without using corporal punishment and no longer employ those methods.

SRS has determined that these facts show that the petitioners are unable to discipline children in a constructive and educational manner. While it may be possible to draw a different conclusion from these facts, SRS'

conclusion must be upheld if it has a reasonable basis. See Fair Hearings 12,790 and 13,092. SRS' decision can only be overturned if the petitioners can show that the conclusion was an abuse of SRS' discretion.

There is no question that SRS considered and reviewed all of the pertinent facts and information in this matter. While there is evidence that indicates that the petitioners may have now changed their disciplining methods, there is also ample evidence that shortly before they applied for a foster care license, they used discipline methods which SRS had specifically told them not to use with regard to the foster children. The petitioners have not shown that SRS' decision to rely on what has occurred in the past rather than what the petitioners say will occur in the future is an abuse of discretion.

Under SRS' regulations, a foster care license may be "denied . . . if the applicant . . . fails to meet any licensing regulations." Rule 037, Licensing Regulations. SRS has reasonably concluded that the petitioners have failed to meet Regulation 201.3 requiring a demonstrated ability to apply discipline in a constructive and educational manner. As a matter of law, the Board is bound to affirm SRS' decision. 3 V.S.A. § 3091(d) and Fair Hearing Rule 17.

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